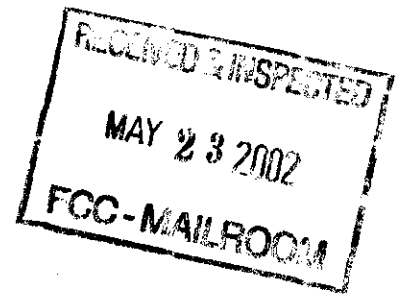


Before the  
Federal Communications Commission  
Washington, D.C. 20554



In the Matter of	)	
	)	
Request for Review of the	)	
Decision of the	)	
Universal Service Administrator by	)	
	)	
Merrimack Valley Library Consortium	)	File No. SLD-264801
Andover, Massachusetts	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45✓
Universal Service	)	
	)	
Changes to the Board of Directors of the	)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.	)	

**ORDER**

**Adopted: May 20, 2002**

**Released: May 21, 2002**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by Merrimack Valley Library Consortium, Andover, Massachusetts.<sup>1</sup> Merrimack requests review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) concerning Merrimack's application for discounts in Funding Year 4 under the schools and libraries universal service support mechanism.<sup>2</sup> For the reasons set forth below, we deny Merrimack's Request for Review.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>3</sup> In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.<sup>4</sup>

3. Once the applicant has complied with the Commission's competitive bidding

<sup>1</sup> Letter from Lawrence R. Rungren, Merrimack Valley Library Consortium, to Federal Communications Commission, filed August 6, 2001 (Request for Review).

<sup>2</sup> See Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

<sup>3</sup> 47 C.F.R. §§ 54.502, 54.503.

<sup>4</sup> 47 C.F.R. § 54.504(b)(1), (b)(3).

requirements and entered into agreements for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carriers with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.<sup>5</sup> In Funding Year 4, this information was provided in Block 5 of the FCC Form 471.<sup>6</sup> Using information provided by the applicant in its FCC Form 471, the Administrator determines the amount of discounts for which the applicant is eligible. Approval of the application is contingent upon the filing of FCC Form 471, and funding commitment decisions are based on information provided by the school or library in this form.

4. Under the Commission's regulations, SLD is authorized to establish and implement filing periods and program standards for FCC Form 471 applications by schools and libraries seeking to receive discounts for eligible services.<sup>7</sup> Pursuant to this authority, every funding year, SLD establishes and notifies applicants of a "minimum processing standard" to facilitate the efficient review of the thousands of applications requesting funding.<sup>8</sup> In Funding Year 4, minimum processing standards required applicants to complete either items 13 or 14 of Block 5.<sup>9</sup> Specifically, SLD instructions requested that applicants provide either the service provider information number in item 13, or the service provider name in item 14.<sup>10</sup> With this information, SLD is able to determine whether the service provider is eligible for discounts under the Commission's rules.<sup>11</sup> When an applicant submits a Block 5 Worksheet that omits an item subject to the minimum processing standard, SLD automatically rejects the funding request and returns it to the applicant.

<sup>5</sup> 47 C.F.R. § 54.504(c).

<sup>6</sup> Schools and Libraries Universal Service, Service Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471).

<sup>7</sup> See 47 C.F.R. § 54.507(c); *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998).

<sup>8</sup> See, e.g., SLD web site, Form 471 Minimum Processing Standards and Filing Requirements for FY4, <<http://www.sl.universalservice.org/reference/471mps.asp>> (Funding Year 4 Minimum Processing Standards).

<sup>9</sup> *Id.*

<sup>10</sup> Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (October 2000) (Form 471 Instructions) at 18.

<sup>11</sup> Pursuant to the Commission's rules, only telecommunications carriers that are common carriers are eligible to receive reimbursement for telecommunications services. See 47 C.F.R. § 54.502; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9005-23, 9084-90 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part, Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (*affirming Universal Service Order in part and reversing and remanding on unrelated grounds*), *cert. denied, Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), *cert. denied, AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), *cert. dismissed, GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000); *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket Nos. 96-45, 96-262, 94-1, 91-213, and 95-72, Fourth Order on Reconsideration in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318, 5413-14 (1997). See also Form 471 Instructions at 17. In order to be eligible to receive reimbursements for Internet access and internal connections, a vendor must secure a Service Provider Identification Number and certify that it will comply with program rules. See Form 471 Instructions at 17. See also 47 C.F.R. 54.517; *Universal Service Order*, 12 FCC Rcd at 9015.

5. Merrimack filed its FCC Form 471 with SLD on January 17, 2001.<sup>12</sup> Merrimack included one Block 5 worksheet in its application, which indicated that Merrimack was requesting discounts for telecommunications services. Merrimack failed to provide any information in items 13 or 14.<sup>13</sup> As a result, SLD returned the application to Merrimack because it did not meet minimum processing standards.<sup>14</sup> On February 9, 2001, Merrimack appealed the decision to SLD and provided a revised FCC Form 471 with the missing information.<sup>15</sup> SLD denied the appeal on July 13, 2001, citing its original reasoning that the applicant failed to meet the minimum processing standards.<sup>16</sup> In response, Merrimack filed the instant Request for Review stating that it did not receive the initial rejection until after the close of the filing window, and that they had no opportunity to correct its application.<sup>17</sup> Further, Merrimack states that a method for correcting such errors should have been available. Merrimack also attached a revised copy of its application.<sup>18</sup>

6. As an initial matter, we conclude that Merrimack may not amend its FCC Form 471. The application window for Funding Year 4 closed on January 18, 2001. Merrimack filed a revised copy of its Form 471 on February 9 and August 6, 2001, after the end of the Funding Year 4 filing window.<sup>19</sup> The Commission's rules have established a policy that applicants are not permitted to amend completed FCC Forms 471 after the closure of the filing window.<sup>20</sup> If applicants were permitted to correct their applications after SLD has denied them, it would eliminate any incentive to avoid making unauthorized service requests or to comply with the SLD's document demands in a timely fashion.<sup>21</sup> This would significantly increase the administrative burden SLD would face while carrying out its obligation to guard against the occurrence of errors and fraud.<sup>22</sup> Furthermore, if applicants were permitted to amend their requests after the filing window closed, it could jeopardize SLD's ability to accurately apply the rules of priority in years where requests for funding exceed the annual funding cap.<sup>23</sup> This

<sup>12</sup> FCC Form 471, Merrimack Valley Library Consortium, filed January 17, 2001 (Merrimack Form 471).

<sup>13</sup> *Id.*

<sup>14</sup> Letter from Universal Service Administrative Corporation, Schools and Libraries Division to Lawrence Rungren, Merrimack Library Valley Consortium, issued February 1, 2001.

<sup>15</sup> Letter from Bill Manson, Merrimack Valley Library Consortium, to Universal Service Administrative Corporation, Schools and Libraries Division, filed February 9, 2001 (SLD Appeal Letter).

<sup>16</sup> See Letter from Universal Service Administrative Corporation, Schools and Libraries Division to Bill Manson, Merrimack Valley Library Consortium, issued July 13, 2001.

<sup>17</sup> See Request for Review.

<sup>18</sup> *Id.*

<sup>19</sup> Merrimack attached a revised worksheet to the SLD Appeal Letter and the Request for Review. The SLD Appeal Letter was filed on February 9, 2001, and the Request for Review was filed on August 6, 2001. See SLD Appeal Letter; Request for Review.

<sup>20</sup> The Commission's rules require that applicants file a completed FCC Form 471 by the filing window deadline to be considered pursuant to the funding priorities for "in-window" applicants. 47 C.F.R. §§ 54.504(c), 54.507(c).

<sup>21</sup> See *Request for Review by Cheney Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-142969, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 5192, 5195 (2001).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

policy imposes upon applicants the responsibility of preparing its applications carefully.

7. Moreover, we are not persuaded by Merrimack's assertion that it should be permitted to correct its application because SLD did not return it within the filing window. The FCC Form 471 instructions inform an applicant that if it does not provide the information requested on the form, "the processing of your application may be delayed or your application may be returned to you without action."<sup>24</sup> Applicants that fail to properly complete the required application or otherwise fail to follow program rules, run the risk that their applications may not be considered within the filing window. For these reasons, we deny Merrimack's request to amend its FCC Form 471 subsequent to the filing window for Funding Year 4.

8. In light of thousands of applications that SLD must review and process each funding year, we find it administratively appropriate to require applicants to strictly adhere to minimum processing standards.<sup>25</sup> In *Naperville*, however, the Commission determined that, under the totality of the circumstances presented in that case, SLD should not have returned an application without consideration for failure to enter information required by SLD's minimum processing standards.<sup>26</sup> The Commission specifically found that "(1) the request for information was a first-time information requirement on a revised form, thereby possibly leading to confusion on the part of the applicants; (2) the omitted information could be easily discerned by SLD through examination of other information included in the application; and (3) the application is otherwise substantially complete."<sup>27</sup>

9. After review of the record, we conclude that, under the totality of the circumstances, SLD correctly returned Merrimack's application. First, we note that the information requested in items 13 and 14 was not a first time information request in Funding Year 4.<sup>28</sup> Second, the omitted information could not be easily discerned through examination of other information included in the application.<sup>29</sup> Therefore, we find that it is incumbent on each

<sup>24</sup> Form 471 Instructions at 2.

<sup>25</sup> See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket No. 96-45 and 97-21, Order, 15 FCC Rcd 181 (Com. Car. Bur. 2000), para. 8 ("In light of the thousands of applications that SLD review and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures."); see also SLD web site, Universal Service Administrative Company, Schools and Libraries Program, Reference Area: Form 471 Minimum Processing Standards and Filing Requirements, <<http://www.sl.universalservice.org/reference/471mps.asp>> (outlining the manual and online filing requirements for FCC Form 471).

<sup>26</sup> *Request for Review by Naperville Community Unit School District 203, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-203343, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 5032, para. 12 (2001) (*Naperville*).

<sup>27</sup> *Id.* para. 16.

<sup>28</sup> See FCC Form 471; Instructions for Completing Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (September 1999) at 20.

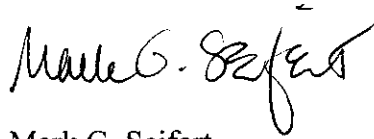
<sup>29</sup> In particular, we note that the information included in attachments to a Block 5 worksheet is not an adequate substitute for satisfactory completion of the FCC Form 471. See *Request for Review by Broome-Tioga BOCES Consortium, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-112132, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 8371 (Com. Car. Bur. 1999), para. 5; *Request for Review by Genesee Intermediate School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-151960, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 11820, 11823 (Com. Car. Bur. 2001).

(continued...)

applicant to clearly indicate either the service provider information number or the service provider name in items 13 or 14 of Block 5. Accordingly, we find that by not providing information in items 13 or 14, Merrimack did not meet minimum processing standards for this request. As a result, we deny Merrimack's Request for Review.

10. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed August 6, 2001 by Merrimack Valley Library Consortium IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert  
Deputy Chief, Telecommunications Access Policy Division  
Wireline Competition Bureau

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2001) ("It would significantly increase SLD's administrative costs if it had to examine every different attachment in thousands of applications to determine if an applicant has requested funding for additional services not listed in Block 5.").